

that year, and unexpectedly made Eligible Transmissions on one or more channels or stations in excess of 27,777 aggregate tuning hours during that year, may choose to be treated as a Small Broadcaster during the following year notwithstanding paragraph (1) of the definition of “Small Broadcaster” if it implements measures reasonably calculated to ensure that it will not make Eligible Transmissions exceeding 27,777 aggregate tuning hours during that following year. As to channels or stations over which a Broadcaster transmits Broadcast Retransmissions, the Broadcaster may elect Small Broadcaster status only with respect to any of its channels or stations that meet all of the foregoing criteria.

**§ 380.12 Royalty fees for the public performance of sound recordings and for ephemeral recordings.**

(a) *Royalty rates.* Royalties for Eligible Transmissions made pursuant to 17 U.S.C. 114, and the making of related ephemeral recordings pursuant to 17 U.S.C. 112(e), shall, except as provided in § 380.13(g)(3), be payable on a per-performance basis, as follows:

- (1) 2011: \$0.0017;
- (2) 2012: \$0.0020;
- (3) 2013: \$0.0022;
- (4) 2014: \$0.0023;
- (5) 2015: \$0.0025.

(b) *Ephemeral royalty.* The royalty payable under 17 U.S.C. 112(e) for any reproduction of a phonorecord made by a Broadcaster during this license period and used solely by the Broadcaster to facilitate transmissions for which it pays royalties as and when provided in this section is deemed to be included within such royalty payments and to equal the percentage of such royalty payments determined by the Copyright Royalty Judges for other webcasting as set forth in § 380.3.

(c) *Minimum fee.* Each Broadcaster will pay an annual, nonrefundable minimum fee of \$500 for each of its individual channels, including each of its individual side channels, and each of its individual stations, through which (in each case) it makes Eligible Transmissions, for each calendar year or part of a calendar year during 2011–2015 during which the Broadcaster is a licensee pursuant to licenses under 17

U.S.C. 112(e) and 114, provided that a Broadcaster shall not be required to pay more than \$50,000 in minimum fees in the aggregate (for 100 or more channels or stations). For the purpose of this subpart, each individual stream (*e.g.*, HD radio side channels, different stations owned by a single licensee) will be treated separately and be subject to a separate minimum, except that identical streams for simulcast stations will be treated as a single stream if the streams are available at a single Uniform Resource Locator (URL) and performances from all such stations are aggregated for purposes of determining the number of payable performances hereunder. Upon payment of the minimum fee, the Broadcaster will receive a credit in the amount of the minimum fee against any additional royalties payable for the same calendar year for the same channel or station. In addition, an electing Small Broadcaster also shall pay a \$100 annual fee (the “Proxy Fee”) to the Collective for the reporting waiver discussed in § 380.13(g)(2).

**§ 380.13 Terms for making payment of royalty fees and statements of account.**

(a) *Payment to the Collective.* A Broadcaster shall make the royalty payments due under § 380.12 to the Collective.

(b) *Designation of the Collective.* (1) Until such time as a new designation is made, SoundExchange, Inc., is designated as the Collective to receive statements of account and royalty payments from Broadcasters due under § 380.12 and to distribute such royalty payments to each Copyright Owner and Performer, or their designated agents, entitled to receive royalties under 17 U.S.C. 112(e) and 114(g).

(2) If SoundExchange, Inc. should dissolve or cease to be governed by a board consisting of equal numbers of representatives of Copyright Owners and Performers, then it shall be replaced by a successor Collective upon the fulfillment of the requirements set forth in paragraph (b)(2)(i) of this section.

(i) By a majority vote of the nine Copyright Owner representatives and the nine Performer representatives on